

**STATE OF MICHIGAN
IN THE COURT OF CLAIMS**

MICHIGAN OPEN CARRY, INC,
Plaintiff/Petitioner,

Case No.: 18-_____ -MZ
Honorable _____

v.

COMPLAINT

MICHIGAN DEPARTMENT OF STATE
POLICE also commonly known as the
MICHIGAN STATE POLICE,
Defendant

OUTSIDE LEGAL COUNSEL PLC
PHILIP L. ELLISON (P74117)
Attorney for Plaintiff/Petitioner
PO Box 107
Hemlock, MI 48626
(989) 642-0055
(888) 398-7003 - fax
pellison@olcplc.com

*An action commenced under Section 10 of FOIA "shall
be assigned for hearing and trial or for argument at the
earliest practicable date and expedited in every way."
MCL 15.240(5)*

**VERIFIED COMPLAINT/PETITION FOR ENTRY OF ORDER
DIRECTING FOIA DISCLOSURE & SEEKING OTHER RELIEF**

NOW COMES Plaintiff/Petitioner MICHIGAN OPEN CARRY, INC, by and through
counsel, and complains as follows:

PARTIES

1. Plaintiff/Petitioner MICHIGAN OPEN CARRY, INC (hereinafter
Plaintiff/Petitioner MOC) is a Michigan not-for-profit public advocacy organization that
promotes the lawful open carry of holstered handguns.

2. Defendant MICHIGAN DEPARTMENT OF STATE POLICE (aka the
MICHIGAN STATE POLICE) is agency/department of the State of Michigan.

3. Defendant MICHIGAN DEPARTMENT OF STATE POLICE is a public body
as that term is defined by Michigan's *Freedom of Information Act*, MCL 15.232(d)(i).

JURISDICTION

4. This Court has jurisdiction by statute pursuant to MCL 15.240(1)(b) and MCL 600.6419.

5. Venue is proper in this Court pursuant to MCL 15.240(4).

6. This Court must advance this matter expeditiously as MCL 15.240(5) requires that “[a]n action commenced under this section... shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.”

GENERAL ALLEGATIONS

7. On September 28, 2017, Plaintiff/Petitioner MOC, by and through its agent and president, submitted a *Freedom of Information Act* request to Defendant MICHIGAN DEPARTMENT OF STATE POLICE via electronic mail seeking the following records—

A list of expenditures made by the Department of State Police from money received under the Firearms Act (1927 PA 372, MCL 28.421 et. seq.), regardless of purpose, between October 1, 2015 to September 30, 2016.

For your convenience, please note that this information is required by law to be posted to the Department's website per Section 5e of 1927 PA 372, MCL 28.425e (5)(m).

(5) The department of state police shall by January 1 of each year file with the secretary of the senate and the clerk of the house of representatives, and post on the department of state police's internet website, an annual report setting forth all of the following information for the state for the previous fiscal year:

(m) A list of expenditures made by the department of state police from money received under this act, regardless of purpose.

[hereinafter the “Sept 28 FOIA Request”]

8. A fair and accurate copy of the Sept 28 FOIA Request is attached hereto as **Exhibit A**.

9. Defendant MICHIGAN DEPARTMENT OF STATE POLICE is required by law to compile and publish the requested information (i.e. list of expenditures made by the Department of State Police from money received under the Firearms Act) publicly on a yearly basis pursuant to MCL 28.425e(5)(m).

10. Plaintiff/Petitioner MOC’s Sept 28 FOIA Request specifically cited and quoted MCL 28.425e(5)(m).

11. Plaintiff/Petitioner MOC's Sept 28 FOIA Request specifically stated that if Defendant MICHIGAN DEPARTMENT OF STATE POLICE denies "any or all of this request, please cite each specific exemption you feel justifies the refusal and notify me of the appeal procedures available."

12. The subject line of the Sept 28 FOIA Request contained the phrase "FOIA", and the body of the message specifically used the phrases "freedom of information" and "FOIA" in the first 250 words as required by statute, see MCL 15.235(3)(b).

13. A written request made by electronic mail is not considered to have been received by a public body until one (1) business day after the electronic transmission is made; MCL 15.235(1). Thus, Plaintiff/Petitioner MOC's Sept 28 FOIA request was officially received by Defendant MICHIGAN DEPARTMENT OF STATE POLICE on September 29, 2017.

14. Unless otherwise agreed to in writing by the person making the request, a public body shall respond to a request within five (5) business days after the public body receives a request; MCL 15.235(2). Plaintiff/Petitioner MOC did not agree to waive this requirement, in writing or otherwise.

15. The due date for a response was October 5, 2017.

16. Failure to respond to a request pursuant to MCL 15.235(2) constitutes a public body's final determination to automatically deny the request pursuant to MCL 15.235(3).

17. On October 6, 2017, after the statutory deadline and unbeknownst to Plaintiff/Petitioner MOC, Lance Gackstetter of Defendant MICHIGAN DEPARTMENT OF STATE POLICE's Freedom of Information Unit attempted to issue and mailed a ten (10) business day extension of Defendant MICHIGAN DEPARTMENT OF STATE POLICE's deadline via first-class mail postmarked the same day [hereinafter the "Oct 6 Late Extension Attempt"].

18. A fair and accurate copy of the Oct 6 Late Extension Attempt is attached hereto as **Exhibit B**.

19. A fair and accurate copy of the envelope sending the Oct 6 Late Extension Attempt is attached hereto as **Exhibit C**.

20. On October 10, 2017 at 1:30pm, pursuant to MCL 15.240(1)(a), and prior to receiving Defendant MSP's Oct 6 Late Extension Attempt through first-class mail, Plaintiff/Petitioner MOC undertook an administrative appeal to COL. KRISTE KIBBEY ETUE as the head of the public body, via electronic mail, challengeing Defendant MICHIGAN DEPARTMENT OF STATE POLICE's automatic denial of the Sept 28 FOIA Request [hereinafter the "Oct 10 Denial Appeal"].

21. A fair and accurate copy of the Oct 10 Denial Appeal is attached hereto as **Exhibit D**.

22. Plaintiff/Petitioner MOC's Oct 10 Denial Appeal contained the word "appeal" in both the subject and body and identified the reasons for the appeal.

23. On October 10, 2017 at 3:13pm, Defendant MICHIGAN DEPARTMENT OF STATE POLICE, again through Mr. Gackstetter, replied to Plaintiff/Petitioner MOC's Sept 28 electronic mail, this time via electronic mail [hereinafter the "Gackstetter Email"].

24. A fair and accurate copy of the Gackstetter Email is attached hereto as **Exhibit E**.

25. Defendant MICHIGAN DEPARTMENT OF STATE POLICE's electronic reply, through the Gackstetter Email, contained an attached document postdated October 11, 2017, which claims to be Defendant MICHIGAN DEPARTMENT OF STATE POLICE's response to the Sept 28 FOIA Request [hereinafter the "Gackstetter Response"].

26. A fair and accurate copy of the Gackstetter Response is attached hereto as **Exhibit F**.

27. Defendant also sent a copy of the Gackstetter Response via first-class mail postmarked October 11, 2017, see **Exhibits G and H**.

28. On October 11, 2017, Plaintiff/Petitioner MOC replied to Mr. Gackstetter via electronic mail informing him of Plaintiff/Petitioner MOC's intent to continue to maintain the Oct 10 Denial Appeal submitted the previous day on October 10. In this reply, Plaintiff/Petitioner MOC specifically stated this intent was due to the fact that the Gackstetter Response did not contain any of the information actually requested by Plaintiff/Petitioner MOC, and reiterated that the Defendant MICHIGAN DEPARTMENT OF STATE POLICE is required to inform Plaintiff/Petitioner MOC if the requested information does not exist, stating:

Lastly, as noted in my appeal, if the MSP does not have the documents that I have requested, the FOIA still requires the disclosure of the fact that the requested documents do not exist (*Hartzell v Mayville Community Sch Dist*, 183 Mich App 782; 455 NW2d 411 (1990)).

[hereinafter the "Oct 11 Denial Appeal Affirmation"]

29. A fair and accurate copy of the Oct 11 Denial Appeal Affirmation is attached hereto as **Exhibit I**.

30. On October 25, 2017, after receiving no further communications from Defendant MICHIGAN DEPARTMENT OF STATE POLICE, Plaintiff/Petitioner MOC inquired with Defendant MICHIGAN DEPARTMENT OF STATE POLICE whether or not Defendant MICHIGAN DEPARTMENT OF STATE POLICE intended to respond to Plaintiff/Petitioner MOC's Oct 10 Denial Appeal [hereinafter the "Oct 25 Denial Appeal Inquiry"].

31. A fair and accurate copy of the Oct 25 Denial Appeal Inquiry is attached hereto as **Exhibit J**.

32. As of the filing of this lawsuit, despite Plaintiff/Petitioner MOC's Oct 11 Denial Appeal Affirmation and Oct 25 Denial Appeal Inquiry, Plaintiff/Petitioner MOC's Oct 10 Denial Appeal has gone unanswered and undecided.

33. All told, Defendant MICHIGAN DEPARTMENT OF STATE POLICE has failed to produce copies of the public records actually sought: a list of expenditures made by the Department of State Police from money received under the Firearms Act (1927 PA 372, MCL 28.421 et. seq.), regardless of purpose, between October 1, 2015 to September 30, 2016, as required to be compiled and published publicly on a yearly basis pursuant to MCL 28.425e(5)(m).

COUNT I
WRONGFUL DENIAL / FAILURE TO PRODUCE REQUESTED RECORDS VIA FOIA
SEPT 28, 2017 REQUEST

34. Plaintiff/Petitioner MOC incorporates by reference the previous allegations as if set forth word for word herein.

35. Plaintiff/Petitioner MOC made a proper request for public record(s) under Michigan's *Freedom of Information Act*.

36. Defendant MICHIGAN DEPARTMENT OF STATE POLICE has wrongfully withheld and/or otherwise failed to produce responsive record(s) which Plaintiff/Petitioner MOC is entitled to receive under Michigan's *Freedom of Information Act*.

37. Because there is no proper justification for refusing to actually and timely produce the requested records pursuant to the Sept 28 FOIA Request, Defendant MICHIGAN DEPARTMENT OF STATE POLICE arbitrarily and capriciously violated this Michigan law by refusing to act in accordance with its legal duties under this sunshine statute.

38. By COL. KRISTE KIBBEY ETUE ignoring a rightful and proper appeal to her as the head of Defendant MICHIGAN DEPARTMENT OF STATE POLICE, Defendant MICHIGAN DEPARTMENT OF STATE POLICE, by COL. KRISTE KIBBEY ETUE, arbitrarily and capriciously violated this Michigan law by refusing to act in accordance with the Act.

39. Plaintiff/Petitioner MOC has incurred attorney fees, costs, and disbursements which must be ordered paid by Defendant MICHIGAN DEPARTMENT OF STATE POLICE pursuant to MCL 15.240(6).

40. The Court is requested to award all available punitive damages to Plaintiff/Petitioner MOC and impose all civil fines against Defendant MICHIGAN DEPARTMENT OF STATE POLICE as authorized by Michigan's *Freedom of Information Act*.

COUNT II
HARTZELL FOIA CLAIM WITH SOUGHT LASH RELIEF

41. Plaintiff/Petitioner MOC incorporates by reference the previous allegations as if set forth word for word herein.

42. This Count is pled in the alternative to Count I, contingent upon Defendant MICHIGAN DEPARTMENT OF STATE POLICE's failure to disclose via the Sept 28 FOIA Request that information/record sought does not exist.

43. Under Michigan law, it is "inconsistent with the purposes of the FOIA for a public body to remain silent, knowing that a requested record does not exist, and force the requesting party to file a lawsuit in order to ascertain that the document does not exist," *Hartzell v Mayville Sch Dist*, 183 Mich App 782 (1990).

44. Defendant MICHIGAN DEPARTMENT OF STATE POLICE is statutorily duty bound to have compiled and possess the records and information sought by Plaintiff/Petitioner MOC pursuant to MCL 28.425e(5)(m).

45. At no time prior to the filing of this lawsuit did Defendant MICHIGAN DEPARTMENT OF STATE POLICE disclose that the responsive records required to be compiled and published pursuant to MCL 28.425e(5)(m) and sought by Plaintiff/Petitioner MOC did not and does not exist.

46. By remaining silent and/or actively undertaking intentional deceptive act to hide the non-existence of the responsive records required to be compiled and published pursuant to MCL 28.425e(5)(m) which were expressly sought by Plaintiff/Petitioner MOC via the Sept 28 FOIA Request, Defendant MICHIGAN DEPARTMENT OF STATE POLICE violated the *Freedom of Information Act*.

47. If the responsive records do not exist, Defendant MICHIGAN DEPARTMENT OF STATE POLICE has violated the *Freedom of Information Act* which imposes numerous remedies including 1.) the mandatory award of costs and fees where one is forced into litigation to discover the non-existence of a requested record, even though the action has been rendered moot by the illegal acts of the public body; 2.) fines and punitive damages for the arbitrary and capricious violation of the *Freedom of Information Act* as a matter of law; and 3.) reasonable attorney fees, costs, and disbursements pursuant to *Hartzell*.

48. Plaintiff/Petitioner MOC has incurred attorney fees, costs, and disbursements in seeking the rightful fulfillment of her request under Michigan's *Freedom of Information Act*.

RELIEF REQUESTED


49. WHEREFORE, Plaintiff/Petitioner MOC requests this Court—
- a. enter an order assigning this matter hearing and trial or for argument at the earliest practicable date and be expedited in every way pursuant to MCL 15.240(5);
 - b. find Defendant MICHIGAN DEPARTMENT OF STATE POLICE violated the *Freedom of Information Act* as it applies to Plaintiff MOC's Sept 28 FOIA Request;
 - c. enter an order against Defendant MICHIGAN DEPARTMENT OF STATE POLICE compelling the disclosure of the public records requested and granted via the Sept 28 FOIA Request;
 - d. find that COL. KRISTE KIBBEY ETUE, as the head of Defendant MICHIGAN DEPARTMENT OF STATE POLICE, violated the *Freedom of Information Act* by refusing to rule on Plaintiff/Petitioner MOC's appeal and that such acts constitute an arbitrary and capricious violation of the *Freedom of Information Act* and/or a willfully and intentionally failure to comply with the *Freedom of Information Act*, and/or otherwise acted in bad faith in violation of the *Freedom of Information Act*;
 - e. to the extent applicable, find Defendant MICHIGAN DEPARTMENT OF STATE POLICE violated the *Freedom of Information Act* pursuant to *Hartzell v Mayville Sch Dist*, 183 Mich App 782 (1990);
 - f. to the extent applicable, enter an order pursuant to *Lash v Traverse City*, 479 Mich 180 (2007) commanding Defendant MICHIGAN DEPARTMENT OF STATE POLICE to comply with MCL 28.425e(5)(m) henceforth by posting on Defendant MICHIGAN DEPARTMENT OF STATE POLICE's internet website an annual report setting forth a list of expenditures made by the Defendant MICHIGAN DEPARTMENT OF STATE POLICE from money received under the *Firearms Act*, regardless of purpose and disclose the same to Plaintiff/Petitioner MOC;
 - g. enter an order awarding all reasonable attorney fees, costs, and disbursements required by MCL 15.240(6) and/or *Hartzell v Mayville Sch Dist*, 183 Mich App 782 (1990);
 - h. enter an order awarding all punitive damages and imposing all civil fines authorized by Michigan's *Freedom of Information Act*, and
 - i. grant all other relief that Court deems equitable and just.

<<CONTINUE ON NEXT PAGE>>

VERIFICATION

1. Plaintiff/Petitioner MICHIGAN OPEN CARRY, INC, by its agent and president Thomas Lambert, has reviewed the above-pled complaint.
2. Regarding the allegations of which Plaintiff/Petitioner MICHIGAN OPEN CARRY, INC, by its agent and president Thomas Lambert, has personal knowledge, it believes them to be true.
3. Regarding the allegations of which Plaintiff/Petitioner MICHIGAN OPEN CARRY, INC, by its agent and president Thomas Lambert, does not have personal knowledge, it believes them to be true based on specified information, documents, or both.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.



Thomas Lambert, on behalf of
Michigan Open Carry, Inc

3/26/18

Date

<<CONTINUE ON NEXT PAGE>>

Date: March 26, 2018

RESPECTFULLY SUBMITTED:

Philip L Ellison

OUTSIDE LEGAL COUNSEL PLC
BY PHILIP L. ELLISON (P74117)
Attorney for Plaintiff / Petitioner
PO Box 107 · Hemlock, MI 48626
(989) 642-0055
(888) 398-7003 - fax
pellison@olcplc.com

**Electronic signature authorized by MCR 2.114(C)(3) and MCR 1.109(D)(1)-(2)



MOC
mail

Tom Lambert



miopencarry.org>

MSP FOIA Request

Tom Lambert <tlambert@miopencarry.org>
To: MSP-FOI@michigan.gov
Cc: MiOC Board <board@miopencarry.org>
Bcc: Dean Greenblatt <dgg@mnsi.net>

Thu, Sep 28, 2017 at 12:00 PM

To whom it may concern,

On behalf of Michigan Open Carry, Inc., and pursuant to the Michigan Freedom of Information Act (FOIA), Michigan Public Act 442 of 1976; MCL 15.231 et. seq., I am hereby requesting an opportunity to inspect or obtain copies of public records. I am hereby requesting the following from the Michigan Department of State Police:

- A list of expenditures made by the Department of State Police from money received under the Firearms Act (1927 PA 372, MCL 28.421 et. seq.), regardless of purpose, between October 1, 2015 to September 30, 2016.

For your convenience, please note that this information is required by law to be posted to the Department's website per Section 5e of 1927 PA 372, [MCL 28.425e](#) (5)(m).

(5) The department of state police shall by January 1 of each year file with the secretary of the senate and the clerk of the house of representatives, and post on the department of state police's internet website, an annual report setting forth all of the following information for the state for the previous fiscal year:

(m) A list of expenditures made by the department of state police from money received under this act, regardless of purpose.

I am also hereby requesting a waiver of all fees as the disclosure of the requested information is in the public interest, as well as required by law, and will contribute to the public's understanding and knowledge of the Department of State Police's operations.

If you deny any or all of this request, please cite each specific exemption you feel justifies the refusal and notify me of the appeal procedures available.

Lastly, please make any copies generated under this request available electronically.

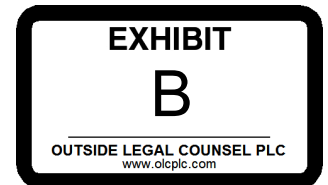
Thank you,

Tom Lambert
President
Michigan Open Carry, Inc.



STATE OF MICHIGAN
DEPARTMENT OF STATE POLICE
LANSING

RICK SNYDER
GOVERNOR



COL. KRISTE KIBBEY ETUE
DIRECTOR

10/05/2017

TOM LAMBERT
MICHIGAN OPEN CARRY INC
XX
XX, MI 00000

NOTICE OF EXTENSION

Subject: CR-20048219; FIREARMS ACT;

Dear TOM LAMBERT:

The Michigan Department of State Police has received your request for public records under the Michigan Freedom of Information Act (FOIA), MCL 15.231 *et seq.*

We are extending the time for responding to your request by ten (10) business days, as permitted under MCL 15.235, Section 5(2)(d). Therefore, a written notice will be issued to you on or before October 19, 2017.

If you have any questions concerning this matter, please feel free to contact our office at 517-241-1934 or email MSP-FOI@michigan.gov. You may also write to us at the address listed below and enclose a copy of this correspondence.

To review a copy of the Department's written public summary, procedures and guidelines, go to www.michigan.gov/msp.

Sincerely,

LANCE GACKSTETTER
Freedom of Information Unit
Michigan State Police

EXHIBIT
C
OUTSIDE LEGAL COUNSEL PLC
www.olcplc.com



STATE OF MICHIGAN
DEPARTMENT OF STATE POLICE
RECORDS RESOURCE UNIT
P.O. BOX 30634
LANSING, MICHIGAN 48909

Celebrating 100 Years of Service

*** LANSING MI 489 10/6/17 ***

PRESORTED
FIRST CLASS

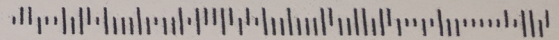


U.S. POSTAGE PITNEY BOWES

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Michigan Open Carry Inc
Tom Lambert
Po Box 16184
Lansing MI 48901

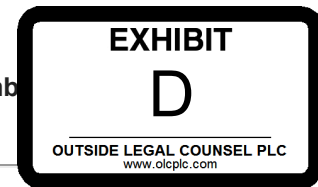
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MOC
mail

Tom Lambert



miopencarry.org>

FOIA Denial APPEAL

Tom Lambert <tlambert@miopencarry.org>
 To: EtueK@michigan.gov
 Cc: MSP-FOI@michigan.gov, MiOC Board <board@miopencarry.org>

Tue, Oct 10, 2017 at 1:30 PM

Col. Etue,

Pursuant to Section 10 of the Michigan Freedom of Information Act (FOIA), MCL 15.240(1)(a), I am hereby appealing the DENIAL of my FOIA request submitted to the Michigan Department of State Police (MSP) on September 28th, 2017, which I have attached as "MOC FOIA Request".

My request is for a list of expenditures made by the Department of State Police from money received under the Firearms Act (1927 PA 372, MCL 28.421 et. seq.), regardless of purpose, between October 1, 2015 to September 30, 2016.

As noted in my request, this information is statutorily required to be posted to the MSP's publicly available website on a yearly basis pursuant to MCL 28.425e(5)(m).

Background

On September 28th, 2017 at 12:00pm, I submitted on behalf of Michigan Open Carry, Inc. a FOIA request to the Michigan Department of State Police, pursuant to the FOIA, attached as "MOC FOIA Request". The request contained "FOIA" in both the subject line and within the first 250 words of the letter.

Per the MSP's publicly available FOIA Procedures and Guidelines, attached as "MSP Procedures and Guidelines", available at http://www.michigan.gov/msp/0,4643,7-123-1878_63999---,00.html, the request was submitted via email to MSP-FOI@michigan.gov.

Approximately 1 minute after sending the request, I received an email from MSP-FOI@michigan.gov with the subject line "*AUTOMATIC REPLY*", attached as "MSP Automatic Reply". The reply acknowledged the receipt of my request and indicated a response would be sent pursuant to the FOIA.

Under MCL 15.235 (1), because the request was sent via electronic mail, the request was considered received by the MSP one business day after it was sent, that date being September 29th, 2017.

Per MCL 15.235 (2), a public body who receives a request under the FOIA shall respond to a request for public information within 5 business days after the public body receives the request, doing one of four things. (a) granting the request, (b) denying the request, (c) granting in part and denying in part, or (d) extending the deadline to respond for not more than 10 business days.

As of October 10th, 2017, other than the initial automated reply, the MSP has not responded to the request.

Per MCL 15.235 (3), a failure of a body to respond to a qualifying request pursuant to Subsection 2, MCL 15.235 (2), "*constitutes a public body's final determination to deny the request*".

Per MCL 15.240 (1), "*If a public body makes a final determination to deny all or a portion of a request, the requesting person may do 1 of the following at his or her option: (a) Submit to the head of the public body a written appeal that specifically states the word "appeal" and identifies the reason or reasons for reversal of the denial. (b) Commence a civil action in the circuit court, or if the decision of a state public body is at issue, the court of claims, to compel the public body's disclosure of the public records within 180 days after a public body's final determination to deny a request.*"

This appeal follows

Reasons for Appeal

By not responding to my request pursuant to the FOIA, as the automated reply indicated would happen, the MSP has improperly denied my request. To date, no exemptions have been declared and no justifications to deny my request have been provided.

The Firearms Act mandates that the MSP report the information I have requested to legislative leadership, as well as post it publicly online by January 1st of each year.

MCL 28.425e(5)(m)

(5) The department of state police shall by January 1 of each year file with the secretary of the senate and the clerk of the house of representatives, **and post on the department of state police's internet website**, an annual report setting forth all of the following information for the state for the previous fiscal year:

(m) A list of expenditures made by the department of state police from money received under this act, regardless of purpose.

The FOIA requires a public body to notify a requestor if the information requested is available on the public body's public website, and direct the requestor to where the information can be obtained.

MCL 15.234 (5)

(5) If the public body directly or indirectly administers or maintains an official internet presence, **any public records available to the general public on that internet site at the time the request is made are exempt from any charges under subsection (1)(b). If the FOIA coordinator knows or has reason to know that all or a portion of the requested information is available on its website, the public body shall notify the requestor in its written response that all or a portion of the requested information is available on its website. The written response, to the degree practicable in the specific instance, shall include a specific webpage address where the requested information is available.** On the detailed itemization described in subsection (4), the public body shall separate the requested public records that are available on its website from those that are not available on the website and shall inform the requestor of the additional charge to receive copies of the public records that are available on its website. If the public body has included the website address for a record in its written response to the requestor and the requestor thereafter stipulates that the public record be provided to him or her in a paper format or other form as described under subsection (1)(c), the public body shall provide the public records in the specified format but may use a fringe benefit multiplier greater than the 50% limitation in subsection (2), not to exceed the actual costs of providing the information in the specified format.

Further, if the MSP does not have the documents that I have requested, the FOIA still requires the disclosure of the fact that the requested documents do not exist (*Hartzell v Mayvill Community Sch Dist*, 183 Mich App 782; 455 NW2d 411 (1990)).

Action Requested

I ask that you please reverse the arbitrary denial of my request and comply with the FOIA fully at your soonest opportunity.

Lastly, please know that I'm happy to work with the MSP in good faith to obtain this information, if the MSP is willing to do the same.

Tom Lambert
President
Michigan Open Carry, Inc.

3 attachments

MOC FOIA Request.pdf
109K



MSP Procedures and Guidelines.pdf
126K



MSP Automatic Reply.pdf
78K



Tom Lambert



y.org>

MSP FOIA Request

MSP-FOI <MSP-FOI@michigan.gov>
To: Tom Lambert <tlambert@miopencarry.org>
Cc: MiOC Board <board@miopencarry.org>

Tue, Oct 10, 2017 at 3:19 PM

Good afternoon, Mr. Lambert:

Attached is the response to your Freedom of Information Act request below.

Thank you,

MSP-FOI

From: Tom Lambert [mailto:tlambert@miopencarry.org]
Sent: Thursday, September 28, 2017 12:01 PM
To: MSP-FOI
Cc: MiOC Board
Subject: MSP FOIA Request

To whom it may concern,

On behalf of Michigan Open Carry, Inc., and pursuant to the Michigan Freedom of Information Act (FOIA), Michigan Public Act 442 of 1976; MCL 15.231 et. seq., I am hereby requesting an opportunity to inspect or obtain copies of public records. I am hereby requesting the following from the Michigan Department of State Police:

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For your convenience, please note that this information is required by law to be posted to the Department's website per Section 5e of 1927 PA 372, [MCL 28.425e \(5\)\(m\)](#).

(5) The department of state police shall by January 1 of each year file with the secretary of the senate and the clerk of the house of representatives, and post on the department of state police's internet website, an annual report setting forth all of the following information for the state for the previous fiscal year:

(m) A list of expenditures made by the department of state police from money received under this act, regardless of purpose.

I am also hereby requesting a waiver of all fees as the disclosure of the requested information is in the public interest, as well as required by law, and will contribute to the public's understanding and knowledge of the Department of State Police's operations.

10/10/2017

Michigan Open Carry, Inc. Mail - MSP FOIA Request

If you deny any or all of this request, please cite each specific exemption you feel justifies the refusal and notify me of the appeal procedures available.

Lastly, please make any copies generated under this request available electronically.

Thank you,

Tom Lambert

President

Michigan Open Carry, Inc.



20048219 - Firearms Act Expenditures.pdf

293K



STATE OF MICHIGAN
DEPARTMENT OF STATE POLICE
LANSING

RICK SNYDER
GOVERNOR



COL. KRISTE KIBBEY ETUE
DIRECTOR

October 11, 2017

Mr. Tom Lambert
Michigan Open Carry, Inc.
P.O. Box 16184
Lansing, Michigan 48901

Subject: CR-20048219; Firearms Act Expenditures

Dear Mr. Lambert:

The Department of Michigan State Police (MSP) has received your request for records and processed it under the provisions of the Michigan Freedom of Information Act (FOIA), MCL 15.231 *et seq.*

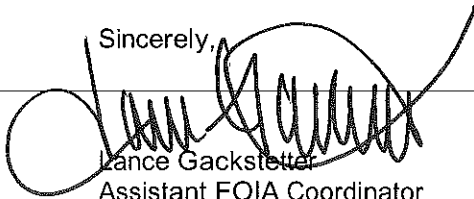
Your request is granted. The records you have requested are available on the department's website at http://www.michigan.gov/msp/0,4643,7-123-1878_1591_3503_4654-77621--,00.html. If you would like a paper copy, the cost to produce these records would be \$1.79.

You can submit a check or money order made payable to the STATE OF MICHIGAN and mail to P.O. Box 30266, Lansing, MI 48909. To ensure proper credit, please enclose a copy of this letter with your payment.

Under the FOIA, Section 10 (a copy of which is enclosed) you have the right to appeal to the head of this public body or to a judicial review of the denial. Under the FOIA, Section 10a (a copy of which is enclosed), you have the right to appeal the fee to the head of this public body.

To review a copy of the department's written public summary, procedures, and guidelines, go to www.michigan.gov/msp.

Sincerely,



Lance Gackstetter
Assistant FOIA Coordinator

Enclosures (2)

DENIAL OF RECORDS:

Denial is based on the following provision(s) of the Freedom of Information Act. MCL 15.243, Sec. 13(1). (All that apply are checked)

- (a) Information of a personal nature where the public disclosure of the information would constitute a clearly unwarranted invasion of an individual's privacy.
 - Name(s) telephone number(s) address (es)
 - physical characteristics driver license number(s) date(s) of birth
 - Other _____

- (b) Investigating records compiled for law enforcement purposes, but only to the extent that disclosure would do any of the following:
 - (i) Interfere with law enforcement proceedings.
 - (ii) Deprive a person of the right to a fair trial or impartial administrative adjudication.
 - (iii) Constitute an unwarranted invasion of personal privacy.
 - (iv) Disclose the identity of a confidential source, or if the record is compiled by a law enforcement agency in the course of a criminal investigation, disclose confidential information furnished only by a confidential source.
 - (v) Disclose law enforcement investigative techniques or procedures.
 - (vi) Endanger the life or physical safety of law enforcement personnel.

- (d) Records or information specifically described and exempted from disclosure by statute:
 - MCL 780.758 William Van Regenmorter Crime Victim's Rights Act
 - MCL 28.421b Firearms
 - MCL 28.214 C.J.I.S. Policy Council Act (LEIN information)
 - Statute: _____

- (l) Medical: _____

- (m) Communications and notes within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to a final agency determination of policy or action.

- (n) Records of law enforcement communication codes, or plans for deployment of law enforcement personnel, that if disclosed would prejudice a public body's ability to protect the public safety.

- (s) Unless the public interest in disclosure outweighs the public interest in nondisclosure in the particular instance, public records of a law enforcement agency, the release of which would do any of the following:
 - (i) Identify or provide a means of identifying an informant.
 - (ii) Identify or provide a means of identifying a law enforcement undercover officer or agent or a plain clothes officer as a law enforcement officer or agent.
 - (v) Disclose operation instructions for law enforcement officers or agents.
 - (vii) Endanger the life or safety of law enforcement officers or agents or their families, relatives, children, parents or those who furnish information to law enforcement departments or agencies.
 - (viii) Identify or provide a means of identifying a person as a law enforcement officer, agent, or informant.
 - (ix) Disclose personnel records of law enforcement agencies.

- (w) Information or records that would disclose the social security number of any individual.

~~To the best of the department's knowledge, information, and belief, under the information provided by you or by any other description reasonably known to the department, the public records do not exist within the department.~~

- Based on the information you provided, we are unable to locate any records pertaining to the incident you described. Please resubmit a request with additional information. The following information, if available, is suggested.
 - Specific location (i.e. city, county.)
 - Michigan State Police incident number
 - Names of those involved in the incident
 - Specific dates (i.e., date of incident)
 - Name of driver and their birth date or driver license number
 - Date of birth

- The report you have requested has not yet been completed and filed. Please resubmit your request in 30 days.

Additional Comments:

STATE OF MICHIGAN FREEDOM OF INFORMATION ACT

FEE CALCULATION FORM

File Number: CR-20048219

Requestor Name: TOM LAMBERT

Actual Costs

	Hourly Rate	Hours	Total
Labor (Search, Locate, Examine)*			
Labor (Separate/Delete)*			
Labor (Contractor)**			
Nonpaper Physical Media	Unit Cost	Units	Total
Paper Copies	Unit Cost	Units	Total
DOUBLE SIDED PAPER COPIES	\$ 0.05 / un	10	\$ 0.50
Labor (Duplication)*	Hourly Rate	Hours	Total
GENERAL OFFICE ASSISTANT	\$ 0.38 / hr	0.25 hrs	\$ 0.10
Indigent Waiver***			Total
Other Fees	Unit Cost	Units	Total
Mailing	Cost		Total
MAILING	\$ 1.19	1	\$ 1.19
Total:			\$ 1.79
Applied Payments:			\$ 0.00
Total Balance Due:			\$ 1.79

Part or all of the documents requested are available online at:

Cost to provide the online documents in paper form is \$_____. If you prefer to have these documents mailed, please forward payment and a copy of this form to the Agency for processing. This will result in a new request.

Return a copy of this fee calculation with your payment to ensure proper credit. Make check or money order payable to STATE OF MICHIGAN.

*Cost includes hourly wage and an additional 50% to partially cover the cost of fringe benefits.

**Actual cost does not exceed 6x the state minimum hourly wage.

***Must provide proof of indigence.

Sec. 10.

(1) If a public body makes a final determination to deny all or a portion of a request, the requesting person may do 1 of the following at his or her option:

(a) Submit to the head of the public body a written appeal that specifically states the word "appeal" and identifies the reason or reasons for reversal of the denial.

(b) Commence a civil action in the circuit court, or if the decision of a state public body is at issue, the court of claims, to compel the public body's disclosure of the public records within 180 days after a public body's final determination to deny a request.

(2) Within 10 business days after receiving a written appeal pursuant to subsection (1)(a), the head of a public body shall do 1 of the following:

(a) Reverse the disclosure denial.

(b) Issue a written notice to the requesting person upholding the disclosure denial.

(c) Reverse the disclosure denial in part and issue a written notice to the requesting person upholding the disclosure denial in part.

(d) Under unusual circumstances, issue a notice extending for not more than 10 business days the period during which the head of the public body shall respond to the written appeal. The head of a public body shall not issue more than 1 notice of extension for a particular written appeal.

(3) A board or commission that is the head of a public body is not considered to have received a written appeal under subsection (2) until the first regularly scheduled meeting of that board or commission following submission of the written appeal under subsection (1)(a). If the head of the public body fails to respond to a written appeal pursuant to subsection (2), or if the head of the public body upholds all or a portion of the disclosure denial that is the subject of the written appeal, the requesting person may seek judicial review of the nondisclosure by commencing a civil action under subsection (1)(b).

(4) In an action commenced under subsection (1)(b), a court that determines a public record is not exempt from disclosure shall order the public body to cease withholding or to produce all or a portion of a public record wrongfully withheld, regardless of the location of the public record. Venue for an action against a local public body is proper in the circuit court for the county in which the public record or an office of the public body is located has venue over the action. The court shall determine the matter de novo and the burden is on the public body to sustain its denial. The court, on its own motion, may view the public record in controversy in private before reaching a decision. Failure to comply with an order of the court may be punished as contempt of court.

(5) An action commenced under this section and an appeal from an action commenced under this section shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.

(6) If a person asserting the right to inspect, copy, or receive a copy of all or a portion of a public record prevails in an action commenced under this section, the court shall award reasonable attorneys' fees, costs, and disbursements. If the person or public body prevails in part, the court may, in its discretion, award all or an appropriate portion of reasonable attorneys' fees, costs, and disbursements. The award shall be assessed against the public body liable for damages under subsection (7).

(7) If the court determines in an action commenced under this section that the public body has arbitrarily and capriciously violated this act by refusal or delay in disclosing or providing copies of a public record, the court shall order the public body to pay a civil fine of \$1,000.00, which shall be deposited into the general fund of the state treasury. The court shall award, in addition to any actual or compensatory damages, punitive damages in the amount of \$1,000.00 to the person seeking the right to inspect or receive a copy of a public record. The damages shall not be assessed against an individual, but shall be assessed against the next succeeding public body that is not an individual and that kept or maintained the public record as part of its public function.

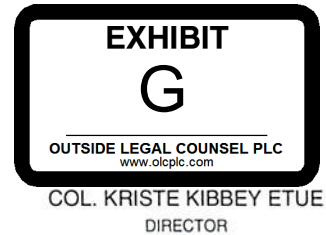
Sec. 10a.

- (1) If a public body requires a fee that exceeds the amount permitted under its publicly available procedures and guidelines or section 4, the requesting person may do any of the following:
- (a) If the public body provides for fee appeals to the head of the public body in its publicly available procedures and guidelines, submit to the head of the public body a written appeal for a fee reduction that specifically states the word "appeal" and identifies how the required fee exceeds the amount permitted under the public body's available procedures and guidelines or section 4.
 - (b) Commence a civil action in the circuit court, or if the decision of a state public body is at issue, in the court of claims, for a fee reduction. The action must be filed within 45 days after receiving the notice of the required fee or a determination of an appeal to the head of a public body. If a civil action is commenced against the public body under this subdivision, the public body is not obligated to complete the processing of the written request for the public record at issue until the court resolves the fee dispute. An action shall not be filed under this subdivision unless 1 of the following applies:
 - (i) The public body does not provide for appeals under subdivision (a).
 - (ii) The head of the public body failed to respond to a written appeal as required under subsection (2).
 - (iii) The head of the public body issued a determination to a written appeal as required under subsection (2).
- (2) Within 10 business days after receiving a written appeal under subsection (1)(a), the head of a public body shall do 1 of the following:
- (a) Waive the fee.
 - (b) Reduce the fee and issue a written determination to the requesting person indicating the specific basis under section 4 that supports the remaining fee. The determination shall include a certification from the head of the public body that the statements in the determination are accurate and that the reduced fee amount complies with its publicly available procedures and guidelines and section 4.
 - (c) Uphold the fee and issue a written determination to the requesting person indicating the specific basis under section 4 that supports the required fee. The determination shall include a certification from the head of the public body that the statements in the determination are accurate and that the fee amount complies with the public body's publicly available procedures and guidelines and section 4.
 - (d) Issue a notice extending for not more than 10 business days the period during which the head of the public body must respond to the written appeal. The notice of extension shall include a detailed reason or reasons why the extension is necessary. The head of a public body shall not issue more than 1 notice of extension for a particular written appeal.
- (3) A board or commission that is the head of a public body is not considered to have received a written appeal under subsection (2) until the first regularly scheduled meeting of that board or commission following submission of the written appeal under subsection (1)(a).
- (4) In an action commenced under subsection (1)(b), a court that determines the public body required a fee that exceeds the amount permitted under its publicly available procedures and guidelines or section 4 shall reduce the fee to a permissible amount. Venue for an action against a local public body is proper in the circuit court for the county in which the public record or an office of the public body is located. The court shall determine the matter de novo, and the burden is on the public body to establish that the required fee complies with its publicly available procedures and guidelines and section 4. Failure to comply with an order of the court may be punished as contempt of court.
- (5) An action commenced under this section and an appeal from an action commenced under this section shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.
- (6) If the requesting person prevails in an action commenced under this section by receiving a reduction of 50% or more of the total fee, the court may, in its discretion, award all or an appropriate portion of reasonable attorneys' fees, costs, and disbursements. The award shall be assessed against the public body liable for damages under subsection (7).
- (7) If the court determines in an action commenced under this section that the public body has arbitrarily and capriciously violated this act by charging an excessive fee, the court shall order the public body to pay a civil fine of \$500.00, which shall be deposited in the general fund of the state treasury. The court may also award, in addition to any actual or compensatory damages, punitive damages in the amount of \$500.00 to the person seeking the fee reduction. The fine and any damages shall not be assessed against an individual, but shall be assessed against the next succeeding public body that is not an individual and that kept or maintained the public record as part of its public function.
- (8) As used in this section, "fee" means the total fee or any component of the total fee calculated under section 4, including any deposit.



STATE OF MICHIGAN
DEPARTMENT OF STATE POLICE
LANSING

RICK SNYDER
GOVERNOR



October 11, 2017

Mr. Tom Lambert
Michigan Open Carry, Inc.
P.O. Box 16184
Lansing, Michigan 48901

Subject: CR-20048219; Firearms Act Expenditures

Dear Mr. Lambert:

The Department of Michigan State Police (MSP) has received your request for records and processed it under the provisions of the Michigan Freedom of Information Act (FOIA), MCL 15.231 *et seq.*

Your request is granted. The records you have requested are available on the department's website at http://www.michigan.gov/msp/0,4643,7-123-1878_1591_3503_4654-77621--,00.html. If you would like a paper copy, the cost to produce these records would be \$1.79.

You can submit a check or money order made payable to the STATE OF MICHIGAN and mail to P.O. Box 30266, Lansing, MI 48909. To ensure proper credit, please enclose a copy of this letter with your payment.

Under the FOIA, Section 10 (a copy of which is enclosed) you have the right to appeal to the head of this public body or to a judicial review of the denial. Under the FOIA, Section 10a (a copy of which is enclosed), you have the right to appeal the fee to the head of this public body.

To review a copy of the department's written public summary, procedures, and guidelines, go to www.michigan.gov/msp.

Sincerely,

Lance Gackstetter
Assistant FOIA Coordinator

Enclosures (2)

DENIAL OF RECORDS:

Denial is based on the following provision(s) of the Freedom of Information Act. MCL 15.243, Sec. 13(1). (All that apply are checked)

- (a) Information of a personal nature where the public disclosure of the information would constitute a clearly unwarranted invasion of an individual's privacy.
 - Name(s)
 - telephone number(s)
 - address (es)
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 - driver license number(s)
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 - Other _____

- (b) Investigating records compiled for law enforcement purposes, but only to the extent that disclosure would do any of the following:
 - (i) Interfere with law enforcement proceedings.
 - (ii) Deprive a person of the right to a fair trial or impartial administrative adjudication.
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 - (iv) Disclose the identity of a confidential source, or if the record is compiled by a law enforcement agency in the course of a criminal investigation, disclose confidential information furnished only by a confidential source.
 - (v) Disclose law enforcement investigative techniques or procedures.
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 - (vii) Endanger the life or safety of law enforcement officers or agents or their families, relatives, children, parents or those who furnish information to law enforcement departments or agencies.
 - (viii) Identify or provide a means of identifying a person as a law enforcement officer, agent, or informant.
 - (ix) Disclose personnel records of law enforcement agencies.

- (w) Information or records that would disclose the social security number of any individual. _____

- To the best of the department's knowledge, information, and belief, under the information provided by you or by any other description reasonably known to the department, the public records do not exist within the department.

- Based on the information you provided, we are unable to locate any records pertaining to the incident you described. Please resubmit a request with additional information. The following information, if available, is suggested.
 - Specific location (i.e. city, county.)
 - Michigan State Police incident number
 - Names of those involved in the incident
 - Specific dates (i.e., date of incident)
 - Name of driver and their birth date or driver license number
 - Date of birth

- The report you have requested has not yet been completed and filed. Please resubmit your request in 30 days.

Additional Comments:

STATE OF MICHIGAN FREEDOM OF INFORMATION ACT

FEE CALCULATION FORM

File Number: CR-20048219

Requestor Name: TOM LAMBERT

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Labor (Separate/Delete)*			
Labor (Contractor)**			
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Paper Copies	Unit Cost	Units	Total
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Labor (Duplication)*	Hourly Rate	Hours	Total
GENERAL OFFICE ASSISTANT	\$ 0.38 / hr	0.25 hrs	\$ 0.10
Indigent Waiver***			Total
Other Fees	Unit Cost	Units	Total
Mailing	Cost		Total
MAILING	\$ 1.19	1	\$ 1.19
Total:			\$ 1.79
Applied Payments:			\$ 0.00
Total Balance Due:			\$ 1.79

Part or all of the documents requested are available online at:

Cost to provide the online documents in paper form is \$_____. If you prefer to have these documents mailed, please forward payment and a copy of this form to the Agency for processing. This will result in a new request.

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Sec. 10a.

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(a) If the public body provides for fee appeals to the head of the public body in its publicly available procedures and guidelines, submit to the head of the public body a written appeal for a fee reduction that specifically states the word "appeal" and identifies how the required fee exceeds the amount permitted under the public body's available procedures and guidelines or section 4.

(b) Commence a civil action in the circuit court, or if the decision of a state public body is at issue, in the court of claims, for a fee reduction. The action must be filed within 45 days after receiving the notice of the required fee or a determination of an appeal to the head of a public body. If a civil action is commenced against the public body under this subdivision, the public body is not obligated to complete the processing of the written request for the public record at issue until the court resolves the fee dispute. An action shall not be filed under this subdivision unless 1 of the following applies:

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(ii) The head of the public body failed to respond to a written appeal as required under subsection (2).

(iii) The head of the public body issued a determination to a written appeal as required under subsection (2).

(2) Within 10 business days after receiving a written appeal under subsection (1)(a), the head of a public body shall do 1 of the following:

(a) Waive the fee.

(b) Reduce the fee and issue a written determination to the requesting person indicating the specific basis under section 4 that supports the remaining fee. The determination shall include a certification from the head of the public body that the statements in the determination are accurate and that the reduced fee amount complies with its publicly available procedures and guidelines and section 4.

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(d) Issue a notice extending for not more than 10 business days the period during which the head of the public body must respond to the written appeal. The notice of extension shall include a detailed reason or reasons why the extension is necessary. The head of a public body shall not issue more than 1 notice of extension for a particular written appeal.

(3) A board or commission that is the head of a public body is not considered to have received a written appeal under subsection (2) until the first regularly scheduled meeting of that board or commission following submission of the written appeal under subsection (1)(a).

(4) In an action commenced under subsection (1)(b), a court that determines the public body required a fee that exceeds the amount permitted under its publicly available procedures and guidelines or section 4 shall reduce the fee to a permissible amount. Venue for an action against a local public body is proper in the circuit court for the county in which the public record or an office of the public body is located. The court shall determine the matter de novo, and the burden is on the public body to establish that the required fee complies with its publicly available procedures and guidelines and section 4. Failure to comply with an order of the court may be punished as contempt of court.

(5) An action commenced under this section and an appeal from an action commenced under this section shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.

(6) If the requesting person prevails in an action commenced under this section by receiving a reduction of 50% or more of the total fee, the court may, in its discretion, award all or an appropriate portion of reasonable attorneys' fees, costs, and disbursements. The award shall be assessed against the public body liable for damages under subsection (7).

(7) If the court determines in an action commenced under this section that the public body has arbitrarily and capriciously violated this act by charging an excessive fee, the court shall order the public body to pay a civil fine of \$500.00, which shall be deposited in the general fund of the state treasury. The court may also award, in addition to any actual or compensatory damages, punitive damages in the amount of \$500.00 to the person seeking the fee reduction. The fine and any damages shall not be assessed against an individual, but shall be assessed against the next succeeding public body that is not an individual and that kept or maintained the public record as part of its public function.

(8) As used in this section, "fee" means the total fee or any component of the total fee calculated under section 4, including any deposit.

Sec. 10.

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- (a) Submit to the head of the public body a written appeal that specifically states the word "appeal" and identifies the reason or reasons for reversal of the denial.
 - (b) Commence a civil action in the circuit court, or if the decision of a state public body is at issue, the court of claims, to compel the public body's disclosure of the public records within 180 days after a public body's final determination to deny a request.
- (2) Within 10 business days after receiving a written appeal pursuant to subsection (1)(a), the head of a public body shall do 1 of the following:
- (a) Reverse the disclosure denial.
 - (b) Issue a written notice to the requesting person upholding the disclosure denial.
 - (c) Reverse the disclosure denial in part and issue a written notice to the requesting person upholding the disclosure denial in part.
 - (d) Under unusual circumstances, issue a notice extending for not more than 10 business days the period during which the head of the public body shall respond to the written appeal. The head of a public body shall not issue more than 1 notice of extension for a particular written appeal.
- (3) A board or commission that is the head of a public body is not considered to have received a written appeal under subsection (2) until the first regularly scheduled meeting of that board or commission following submission of the written appeal under subsection (1)(a). If the head of the public body fails to respond to a written appeal pursuant to subsection (2), or if the head of the public body upholds all or a portion of the disclosure denial that is the subject of the written appeal, the requesting person may seek judicial review of the nondisclosure by commencing a civil action under subsection (1)(b).
- (4) In an action commenced under subsection (1)(b), a court that determines a public record is not exempt from disclosure shall order the public body to cease withholding or to produce all or a portion of a public record wrongfully withheld, regardless of the location of the public record. Venue for an action against a local public body is proper in the circuit court for the county in which the public record or an office of the public body is located has venue over the action. The court shall determine the matter de novo and the burden is on the public body to sustain its denial. The court, on its own motion, may view the public record in controversy in private before reaching a decision. Failure to comply with an order of the court may be punished as contempt of court.
- (5) An action commenced under this section and an appeal from an action commenced under this section shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.
- (6) If a person asserting the right to inspect, copy, or receive a copy of all or a portion of a public record prevails in an action commenced under this section, the court shall award reasonable attorneys' fees, costs, and disbursements. If the person or public body prevails in part, the court may, in its discretion, award all or an appropriate portion of reasonable attorneys' fees, costs, and disbursements. The award shall be assessed against the public body liable for damages under subsection (7).
- (7) If the court determines in an action commenced under this section that the public body has arbitrarily and capriciously violated this act by refusal or delay in disclosing or providing copies of a public record, the court shall order the public body to pay a civil fine of \$1,000.00, which shall be deposited into the general fund of the state treasury. The court shall award, in addition to any actual or compensatory damages, punitive damages in the amount of \$1,000.00 to the person seeking the right to inspect or receive a copy of a public record. The damages shall not be assessed against an individual, but shall be assessed against the next succeeding public body that is not an individual and that kept or maintained the public record as part of its public function.

EXHIBIT
H
OUTSIDE LEGAL COUNSEL PLC
www.olcplc.com



STATE OF MICHIGAN
DEPARTMENT OF STATE POLICE
RECORDS RESOURCE UNIT
P.O. BOX 30634
LANSING, MICHIGAN 48909

Celebrating 100 Years of Service



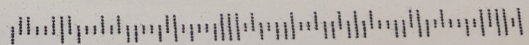
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Tom Lambert <



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MSP FOIA Request

Tom Lambert <tlambert@miopencarry.org>
 To: MSP-FOI@michigan.gov
 Cc: EtueK@michigan.gov, MiOC Board <board@miopencarry.org>

Wed, Oct 11, 2017 at 1:30 PM

Mr. Gackstetter,

Thank you for your response; however I have already appealed to the Director under MCL 15.240(1)(a), see "MOC Denial Appeal" attached, which requires the head of the public body to respond as specified in the section. At this time I wish to maintain this appeal as I do not believe I have been provided with the documentation I have requested.

In my request I explicitly requested, along with a full statutory reference to and quote of the related reporting requirement in Section 5e of the Firearms act:

- A list of expenditures made by the Department of State Police from money received under the Firearms Act (1927 PA 372, MCL 28.421 et. seq.), regardless of purpose, between October 1, 2015 to September 30, 2016.

The link you provided in your response (http://www.michigan.gov/msp/0,4643,7-123-1878_1591_3503_4654-77621-.00.html) does not direct one to a list of expenditures in a particular date range, but rather to a list of annual reports on Concealed Pistol Licenses dating back to 2003.

With respect to the link you provided, I will say that I have already looked through these reports many times and that it was the lack of the inclusion of information I seek that triggered this FOIA request.

In order to avoid any possible confusion going forward, please note that I am **not** requesting a list of reports, I am not requesting a summary of expenditures, nor am I requesting a list of expenditure categories. I am specifically looking for a **list of expenditures** as provided for in MCL 28.425e(5)(m).

Further, please note that Section 4 of the FOIA provides as follows in Subsection 5 (MCL 15.234 (5)) (emphasis added):

(5) If the public body directly or indirectly administers or maintains an official internet presence, any public records available to the general public on that internet site at the time the request is made are exempt from any charges under subsection (1)(b). If the FOIA coordinator knows or has reason to know that all or a portion of the requested information is available on its website, the public body shall notify the requestor in its written response that all or a portion of the requested information is available on its website. **The written response, to the degree practicable in the specific instance, shall include a specific webpage address where the requested information is available. [...]**

If you feel that I have missed something in your response that you feel complies with my request, then by all means please point specifically to what you think that is.

Lastly, as noted in my appeal, if the MSP does not have the documents that I have requested, the FOIA still requires the disclosure of the fact that the requested documents do not exist (Hartzell v Mayvill Community Sch Dist, 183 Mich App 782; 455 NW2d 411 (1990)).

Thank you for your time and consideration of my request for information, I look forward to a response to my appeal that complies with the FOIA.

Tom Lambert
 President
 Michigan Open Carry, Inc.

On Tue, Oct 10, 2017 at 3:19 PM, MSP-FOI <MSP-FOI@michigan.gov> wrote:

Good afternoon, Mr. Lambert:

Attached is the response to your Freedom of Information Act request below.

Thank you,

MSP-FOI

From: Tom Lambert [mailto:tlambert@miopencarry.org]
Sent: Thursday, September 28, 2017 12:01 PM
To: MSP-FOI
Cc: MiOC Board
Subject: MSP FOIA Request

To whom it may concern,

On behalf of Michigan Open Carry, Inc., and pursuant to the Michigan Freedom of Information Act (FOIA), Michigan Public Act 442 of 1976; MCL 15.231 et. seq., I am hereby requesting an opportunity to inspect or obtain copies of public records. I am hereby requesting the following from the Michigan Department of State Police:

- A list of expenditures made by the Department of State Police from money received under the Firearms Act (1927 PA 372, MCL 28.421 et. seq.), regardless of purpose, between October 1, 2015 to September 30, 2016.

For your convenience, please note that this information is required by law to be posted to the Department's website per Section 5e of 1927 PA 372, [MCL 28.425e](#) (5)(m).

(5) The department of state police shall by January 1 of each year file with the secretary of the senate and the clerk of the house of representatives, and post on the department of state police's internet website, an annual report setting forth all of the following information for the state for the previous fiscal year:

(m) A list of expenditures made by the department of state police from money received under this act, regardless of purpose.

I am also hereby requesting a waiver of all fees as the disclosure of the requested information is in the public interest, as well as required by law, and will contribute to the public's understanding and knowledge of the Department of State Police's operations.

If you deny any or all of this request, please cite each specific exemption you feel justifies the refusal and notify me of the appeal procedures available.

Lastly, please make any copies generated under this request available electronically.

Thank you,


Tom Lambert

President

Michigan Open Carry, Inc.

10/11/2017

Michigan Open Carry, Inc. Mail - MSP FOIA Request

 **MOC Denial Appeal.pdf**
119K



MOC
mail

Tom Lambert



miopencarry.org>

Re: FOIA Denial APPEAL Inquiry

Tom Lambert <tlambert@miopencarry.org>
 To: EtueK@michigan.gov
 Cc: MSP-FOI@michigan.gov, MiOC Board <board@miopencarry.org>

Wed, Oct 25, 2017 at 1:32 PM

Col. Etue,

This email is to inquire as to whether or not you will be responding to my FOIA denial appeal submitted pursuant to Section 10 of the FOIA (MCL 15.240) to yourself and the FOIA unit (MSP-FOI@michigan.gov) on Oct. 10th, 2017 at 1:30pm. The appeal can be found at the end of this email, as well as attached as "MOC FOIA Denial Appeal".

Under Subsection 2 (MCL 15.240 (2)), a head of a public body that receives a written appeal pursuant to the section **shall respond within 10 business days** after receiving the appeal in one of the four prescribed manners.

Under Subsection 3 (MCL 15.240 (3)), a "board or commission that is the head of a public body is not considered to have received a written appeal [...] until the first regularly scheduled meeting of that board or commission following the submission". As the MSP is not directed by a board or commission, and there are no further modifications in the Section augmenting when an appeal is considered received, the appeal can only be considered received immediately. Please note, I have attached the automatic reply that I received in response from the FOIA Unit as "MOC FOIA Denial Appeal Automatic Reply".

10 business days from Oct. 10th, 2017 at 1:30pm is Oct. 24th, 2017 at 1:30pm, which was yesterday, putting the MSP in violation of the FOIA for the **second time** for this request.

Lastly, as noted in the appeal, if the requested documents do not exist, the FOIA requires a disclosure of this fact. "*We would concede that the nonexistence of a record is a defense for the failure to produce or allow access to the record. However, it is not a defense to the failure to respond to a request for a document with the information that it does not exist.*" (Hartzell v Mayville Community Sch Dist, 183 Mich App 782; 455 NW2d 411 (1990)).

I respectfully once again, and for the final time, request that the Department comply with the FOIA and properly respond to my appeal. I ask that you please respond no later than end of business on Friday, October 27th. Failure to respond by this time will mark the one month point in which the MSP has failed to provide information it is required by law to provide publicly on a yearly basis.

Thank you,

Tom Lambert
 President
 Michigan Open Carry, Inc.

On Tue, Oct 10, 2017 at 1:30 PM, Tom Lambert <tlambert@miopencarry.org> wrote:

Col. Etue,

Pursuant to Section 10 of the Michigan Freedom of Information Act (FOIA), MCL 15.240(1)(a), I am hereby appealing the DENIAL of my FOIA request submitted to the Michigan Department of State Police (MSP) on September 28th, 2017, which I have attached as "MOC FOIA Request".

My request is for a list of expenditures made by the Department of State Police from money received under the Firearms Act (1927 PA 372, MCL 28.421 et. seq.), regardless of purpose, between October 1, 2015 to September 30, 2016.

As noted in my request, this information is statutorily required to be posted to the MSP's publicly available website on a yearly basis pursuant to MCL 28.425e(5)(m).

Background

On September 28th, 2017 at 12:00pm, I submitted on behalf of Michigan Open Carry, Inc. a FOIA request to the Michigan Department of State Police, pursuant to the FOIA, attached as "MOC FOIA Request". The request contained "FOIA" in both the subject line and within the first 250 words of the letter.

Per the MSP's publicly available FOIA Procedures and Guidelines, attached as "MSP Procedures and Guidelines", available at http://www.michigan.gov/msp/0,4643,7-123-1878_63999---,00.html, the request was submitted via email to MSP-FOI@michigan.gov.

Approximately 1 minute after sending the request, I received an email from MSP-FOI@michigan.gov with the subject line "**AUTOMATIC REPLY**", attached as "MSP Automatic Reply". The reply acknowledged the receipt of my request and indicated a response would be sent pursuant to the FOIA.

Under MCL 15.235 (1), because the request was sent via electronic mail, the request was considered received by the MSP one business day after it was sent, that date being September 29th, 2017.

Per MCL 15.235 (2), a public body who receives a request under the FOIA shall respond to a request for public information within 5 business days after the public body receives the request, doing one of four things. (a) granting the request, (b) denying the request, (c) granting in part and denying in part, or (d) extending the deadline to respond for not more than 10 business days.

As of October 10th, 2017, other than the initial automated reply, the MSP has not responded to the request.

Per MCL 15.235 (3), a failure of a body to respond to a qualifying request pursuant to Subsection 2, MCL 15.235 (2), "*constitutes a public body's final determination to deny the request*".

Per MCL 15.240 (1), "*If a public body makes a final determination to deny all or a portion of a request, the requesting person may do 1 of the following at his or her option: (a) Submit to the head of the public body a written appeal that specifically states the word "appeal" and identifies the reason or reasons for reversal of the denial. (b) Commence a civil action in the circuit court, or if the decision of a state public body is at issue, the court of claims, to compel the public body's disclosure of the public records within 180 days after a public body's final determination to deny a request.*"

This appeal follows

Reasons for Appeal

By not responding to my request pursuant to the FOIA, as the automated reply indicated would happen, the MSP has improperly denied my request. To date, no exemptions have been declared and no justifications to deny my request have been provided.

The Firearms Act mandates that the MSP report the information I have requested to legislative leadership, as well as post it publicly online by January 1st of each year.

MCL 28.425e(5)(m)

(5) The department of state police shall by January 1 of each year file with the secretary of the senate and the clerk of the house of representatives, **and post on the department of state police's internet website**, an annual report setting forth all of the following information for the state for the previous fiscal year:

(m) A list of expenditures made by the department of state police from money received under this act, regardless of purpose.

The FOIA requires a public body to notify a requestor if the information requested is available on the public body's public website, and direct the requestor to where the information can be obtained.

MCL 15.234 (5)

(5) If the public body directly or indirectly administers or maintains an official internet presence, **any public records available to the general public on that internet site at the time the request is made are exempt from any charges under subsection (1)(b). If the FOIA coordinator knows or has reason to know that all or a portion of the requested information is available on its website, the public body shall notify the requestor in its written response that all or a portion of the requested information is available on its website. The written response, to the degree practicable in the specific instance, shall include a specific webpage address where the requested information is available.** On the detailed itemization described in subsection (4), the public body shall separate the requested public records that are available on its website from those that are not available on the website and shall inform the requestor of the additional charge to receive copies of the public records that are available on its website. If the public body has included the website address for a record in its written response to the requestor and the requestor thereafter stipulates that the public record be provided to him or her in a paper format or other form as described under subsection (1)(c), the public body shall provide the public records in the specified

format but may use a fringe benefit multiplier greater than the 50% limitation in subsection (2), not to exceed the actual costs of providing the information in the specified format.

Further, if the MSP does not have the documents that I have requested, the FOIA still requires the disclosure of the fact that the requested documents do not exist (Hartzell v Mayvill Community Sch Dist, 183 Mich App 782; 455 NW2d 411 (1990)).

Action Requested

I ask that you please reverse the arbitrary denial of my request and comply with the FOIA fully at your soonest opportunity.

Lastly, please know that I'm happy to work with the MSP in good faith to obtain this information, if the MSP is willing to do the same.

Tom Lambert
President
Michigan Open Carry, Inc.

2 attachments



MOC FOIA Denial Appeal.pdf

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MOC FOIA Denial Appeal Automatic Reply.pdf

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